EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT) RULES 2022

2022 No. 101 (L. 4)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Civil Procedure Rules 1998 (S.I. 1998/3132) ("the CPR"), which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and the County Court. The amendment covers eight matters, explained in paragraph 7, below: (a) digital notice of change; (b) acknowledgement of service; (c) default judgment; (d) small claims track limit (e) anonymisation; (f) authorised costs officers; (g) anti-social behaviour and (h) some minor amendments and other tidying up of the Rules. References to a Part or rule by number alone are references to the Part or rule so numbered in the CPR.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Civil Procedure Rules are made by the Civil Procedure Rule Committee (CPRC) under the Civil Procedure Act 1997, section 2(6) of which requires the CPRC before making rules to meet (unless inexpedient to do so) and consult such persons as they consider appropriate. The CPRC meets nine times a year and except in very rare circumstances considers any proposed matters for inclusion in the rules in at least one meeting (as it did for the matters in the present instrument). Consultation is addressed in section 10 of this memorandum.

7. Policy background

What is being done and why?

7.1 The CPR are amended for the following purposes—

7.2 Digital Notice of Change – changes are made to Part 2 and Part 42 to introduce provisions that provide for the process of notifying the courts of a change of legal representative to be carried out by a digital (rather than/in addition to a paper) process. This is part of the HM Courts & Tribunals Service reform programme to digitalise the County Court.

7.3 Acknowledgement of Service – as part of a rolling programme of work by the Committee to review the CPR with a view to brevity and simplification, CPR Part 10, which contains rules about filing an acknowledgment of service, is replaced by a revised Part 10 which incorporates as part of the rules provisions previously contained in a practice direction (Practice Direction 10), so that the practice direction can be revoked, and the consolidated provisions in the new Part 10 are shorter and simpler overall.

7.4 Default Judgment – as with Part 10 as explained above, CPR Part 12, which contains rules about default judgment (judgment entered where the defendant has failed to file an acknowledgment of service or (as the case may be) a defence), is replaced by a revised Part 12 which incorporates as part of the rules provisions previously contained in a practice direction (Practice Direction 12), so that the practice direction can be revoked, with provisions in the revised Part 12 being shorter and simpler overall.

7.5 Small Claims Track Limit – changes are made to Part 26 to increase the small claims track limit in non-road traffic personal injury claims from £1,000 to £1,500. This is an inflationary increase to reflect the passage of time since the limit was last set in 1996. Consequential amendments are also made to Part 16 (on statements of case), Part 27 (on small claims) and Part 45 (on fixed costs). This measure was originally included in the 2016 consultation which informed the Whiplash Reform Programme, but it was subsequently decoupled from Road Traffic Accident (RTA) related Personal Injury claims. The deferral was announced via Written Ministerial Statement (WMS) on 26th April 2021.

7.6 Anonymisation – addressing a lacuna in response to the judgment in the case of Brearley v Higgs & Sons (A Firm) [2021] EWHC 1342 (Ch) in which the court granted an application (agreed between the parties) to redact from an expert report the name of a person consulted by the expert who was neither a witness nor a party, but noted that there was no specific provision in the CPR that covered this situation. The amendment made here to address this point substitutes "person" for "party or witness" in rule 39.2(4).

7.7 Authorised Costs Officers – changes to Part 47 on the powers of an authorised costs officer to clarify where sanctions can be imposed (in relation to where points of dispute are late and the receiving party fails to file a request for a detailed assessment hearing in time) and where they cannot (for failing to commence detailed assessment proceedings). The changes flow from the case of *PME v Scouts [2019] EWHC 3421 QB and PME v Scouts [2019] EWHC B10 (Costs).*

7.8 Anti-Social Behaviour - changes are made to CPR Part 65 in response to a Civil Justice Council report (https://www.judiciary.uk/wp-content/uploads/2020/10/ASBI-final-accessible.pdf) of July 2020, in relation to the use and effectiveness of injunctions ("ASBIs")/committals under the Anti-Social Behaviour Crime and Policing Act 2014. The specific changes in this instrument relate to the report's recommendation on legal advice. The first amendment provides for the ASBI application to include a statement, "that the respondent is entitled to a reasonable

opportunity to obtain legal representation and to apply for legal aid which may be available without any means test" and for the court at the first hearing to, "take appropriate steps" to ensure the respondent is aware of this entitlement.

7.9 Minor amendments and tidying up - a minor change to Part 1 on the Overriding Objective to remove the word "new" before "procedural code", since the procedural code in question (the CPR) is no longer new. Changes are also made to the rules relating to the Planning Court in Part 54, as a consequence of consolidation of the practice direction provisions which supplement the rules in relation to Planning Court proceedings, so that references in the rules to practice direction provisions are amended to refer to provisions of the consolidated practice direction.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 As noted in paragraphs 7.3 and 7.4 above, the Committee is engaged in a rolling programme of reviewing the CPR. That is producing a certain amount of consolidation within Parts of the rules and may result in further consolidation.

10. Consultation outcome

10.1 The Civil Procedure Rule Committee must, before making Civil Procedure Rules, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). The Committee consults, as it considers appropriate to the rules or amendments to rules in question, in a number of ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted; involving representatives of interested organisations in the work of sub-committees reviewing particular aspects of the rules; inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn; and inviting and reviewing suggestions from relevant Government Departments and other authorities affected by rules of civil procedure.

10.2 For matters in this instrument, differing approaches to consultation were taken. The changes in relation to Parts 2 and 42 on the Digital Notice of Change, external users identified the need for a digital notice of change in the context of online services. This assisted in defining a set of requirements for such a solution which was played back to those users for agreement and then further user testing to ensure that it allowed them to effectively complete the activity required by them in an intuitive way. There was also communication with the Law Society and Bar Council to inform them of this capability becoming available. The changes in relation to Parts 10 and 12 arise out of the Committee's programme of review of the rules, which is taking an approach of rolling consultation whereby proposals for review and amendment are published on the Committee's website and revised in the light of responses received. The Part 10 and Part 12 consultation ran for six weeks, closing on 12 November 2021. The amendment to Part 65 in relation to ASBI resulted from extensive work undertaken by the Civil Justice Council's working party over two years including meetings with a wide range of bodies/organisations, and so the consultation undertaken by the Committee for that amendment was of the less formal sort described above; as was the consultation on the other matters addressed by this instrument, involving in particular

engagement with HM Courts and Tribunals Service (HMCTS) and with the relevant judicial leads.

11. Guidance

11.1 Amendments to the CPR are drawn to the attention of participants in the civil justice system by correspondence addressed by the CPR Committee secretariat to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications; as well as by publicity within HM Courts and Tribunals Service. News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website at https://www.justice.gov.uk/courts/procedure-rules/civil

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for the amendments to form part of the Civil Procedure Rules which are kept under continuous review by the Civil Procedure Rule Committee and may be subject to amendment accordingly.

15. Contact

15.1 Amrita Dhaliwal at the Ministry of Justice email: amrita.dhaliwal@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Parkin, Deputy Director for Civil Policy & Law, Access to Justice Directorate, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Wolfson QC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.